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SEAPLANE ADVENTURES, LLC

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7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 SEAPLANE ADVENTURES, LLC, a
11 California Limited Liability Company,

12 Plaintiff,

13 vs.

14 COUNTY OF MARIN, CALIFORNIA;
15 AND DOES 1 THROUGH 10,
INCLUSIVE,

16 Defendants.

) Case No. 20-cv-06222-WHA

)
) DECLARATION OF SAUL AARON SINGER
) ("AARON SINGER") IN SUPPORT OF
) PLAINTIFF'S OPPOSITION TO MOTION
) FOR SUMMARY JUDGMENT

)
) Complaint filed: September 2, 2020
) Trial Date: December 8, 2021

)
) DATE: October 7, 2021
) TIME: 8:00AM
) JUDGE: Honorable William Alsup
) DEPT.: Courtroom 12, 19th Floor

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21 I, Saul Aaron Singer ("Aaron Singer"), declare as follows:

- 22 1. I am over the age of eighteen years old, and I make this declaration in support of Plaintiff's
23 Opposition to Motion for Summary Judgment. I have personal knowledge of the facts stated
24 herein and, if called as a witness in this matter, I could and would competently testify to the
25 facts set forth below.
- 26 2. I am the owner and President of Seaplane Adventures, LLC ("Seaplane" or "Plaintiff"). I
27 have owned Seaplane since January 2012. Seaplane's use permit, and related entitlements,
28

1 have been in place since 1953. An airline is categorized pursuant to how it is certified
2 pursuant to FAA regulations—and Seaplane is an airline business operating in Marin County,
3 California, as an air carrier, certified pursuant to 14 CFR Part 135 and Part 91 of the Federal
4 Aviation Administration (“FAA”) regulations. Seaplane operates air tours, charter flights
5 (including but not limited to flights to Tahoe and Clear Lake, CA) and flight instruction.

6 3. I am also a Senior Part 135 rated Pilot. I learned to fly on a flying scholarship at 16 years old.
7 I am a commercial single/multi instrument rated pilot on both land and sea.

8 4. In 2012, I decided to pursue a life-long dream of owning and operating an aviation business
9 by purchasing the 75-year old San Francisco Seaplane Tours (“SFST”), which I rebranded
10 Seaplane Adventures. I have grown and expanded the business over the last few years to
11 feature air tours around the SF Bay Area, as well as seaplane flight instruction and on
12 demand charter flights.

13 5. In my capacity as owner/President of Seaplane, I am responsible for all business performance
14 of SFST operations, finances, and marketing. I am also the Assistant under Director of
15 Operations for Part 135 training, compliance and operations; the Senior pilot flying the Cessn
16 172 and the DeHavilland Beaver; and the sole part 135 rated pilot.

17 6. I am informed and believe that Seaplane falls within the definition of “essential business,”
18 not only as set forth in the Order of the Health Officer of the County of Marin on March 16,
19 2020 (“March Health Order”), but also as contemplated in the Federal guidelines as applied
20 to airlines, in particular.

21 7. Although I did not believe the March Health Order required Seaplane to cease operations
22 (since Seaplane was and is an “essential business”), I closed down Seaplane anyway out of
23 an abundance of caution.

24 8. However, on May 15, 2020, the County of Marin issued another Order of the Health Officer
25 of the County of Marin (“Health Order” or “Marin Order”). The May 15, 2020 Health Order
26 amended previous health orders, allowing many businesses to remain open or reopen. As
27 such, I decided to reopen Seaplane for business on or about June 5, 2020.

- 1 9. I believe that the plain language of the Health Orders allowed Seaplane to fully reopen
2 operations—and, Seaplane could have done so safely at the time the Health Order was
3 issued. In fact, Seaplane had a Site Specific Protection Plan in place. Seaplane was properly
4 able to limit interactions and maintain social distance. In addition, Seaplane only booked
5 groups from one household or social bubble who were already interacting.
- 6 10. Further, I personally witnessed flights taking off and landing at Gness Field Airport, the
7 airport owned by the County of Marin. I have a hangar at the Gness Field airport, and was
8 routinely at the airport in my hangar—from there, I witnessed multiple flights taking off and
9 landing; all during the time the Health Orders were in effect.
- 10 11. Despite this, the County of Marin shut down Seaplane’s operations, allegedly pursuant to the
11 Health Orders, on July 3, 2021. Although the Marin Health Order specifically states that
12 airlines are an “essential business,” the Marin County Sheriff ordered Plaintiff to close on
13 July 3, 2020 under threat of fines.
- 14 12. The FAA grants the authority to operate on-demand, unscheduled air service (also known as
15 charter-type services) in the form of a Part 135 certificate. 14 CFR Part 135 does not
16 distinguish between “recreational charter flights” and other charter flights.
- 17 13. 14 CFR Part 91 certification authorizes Seaplane to conduct nonstop passenger-carrying
18 flights that begin and end at the same airport and are conducted within a twenty-five (25)
19 mile radius of the airport. Part 91 does not distinguish between “scenic aircraft tours” or
20 otherwise.
- 21 14. Given that the FAA does not distinguish between “recreational charter flights” and other
22 charter flights; I was surprised when the County told me that I was being shut down pursuant
23 to the Health Orders; and I was (obviously) very upset when I learned that the County still
24 was permitting flights out of Gness Field.
- 25 15. An airline/air carrier is similar to another airline/air carrier that is certified under Part 135,
26 because if both airlines were certified pursuant to Part 135, that tells the FAA that both
27 airlines are authorized to operate on-demand, unscheduled air service.
- 28

- 1 16. The Gness Field Airlines are, like Seaplane, also airline businesses operating in Marin
2 County, California, as air carriers, certified pursuant to 14 CFR Part 135 of the FAA
3 regulations. As such, the Gness Field Airlines/air carriers are similar to Plaintiff.
4
- 5 17. Other than Skydive Golden Gate, which ran only a skydiving operation out of Gness Field
6 Airport, the County of Marin did not force any airlines operating out of Gness Field Airport
7 to shut down operations pursuant to the Health Orders.
- 8 18. The County now claims that Seaplane is “similarly-situated” to Skydive Golden Gate and SF
9 Helicopters—both of which they allegedly shut down pursuant to the Health Orders.
10 However, Seaplane is not comparable to these businesses.
- 11 19. Skydiving requires the customer to be physically strapped to the instructor with no more than
12 an inch of room between them. In addition, Skydive Golden Gate was not in the business of
13 providing charter flights.
- 14 20. Seaplane does not own any helicopters, and does not provide helicopter tours. Although SF
15 Helicopters rents a landing pad, located adjacent to Seaplane’s base, for occasional use, its
16 business is not located at Seaplane’s location. Further, since SF Helicopters is based in
17 separate counties (not Marin County), it was able to continue operating throughout the
18 COVID-19 shutdown orders. It just started flying out of other bases, such as Oakland
19 International Airport and San Francisco International Airport.
- 20 21. Seaplane, as the *only* Seaplane base in California, literally could not operate in any other
21 location. As such, Seaplane was completely shut down by the County, as it could not operate
22 out of anywhere except where it is based in Sausalito, CA.
- 23 22. I believe that the County’s shutdown of Seaplane Adventures, LLC was improperly
24 motivated by the Complaints of a handful of wealthy nearby homeowners and other residents
25 that frequently complaint about noise (“Strawberry Neighbors”). (SF Helicopters sometimes
26 operates out of the same location as Plaintiff, and has also been the subject of complaints
27 from the same residents in the Strawberry area).
28

- 1 23. In 2017, the County of Marin tried, but failed, to limit Seaplane's hours of operation and
2 number of flights after these same Strawberry Neighbors complained about noise from the
3 planes. In 2017, Marin County's Planning Commission held a six-hour hearing (which I
4 attended) to consider the matter. Over 250 people attended the hearing, and dozens of
5 members of the public spoke, with a majority of them expressing support for Seaplane and
6 opposition to the changes in its use permit.
- 7 24. During the 2017 Planning Commission hearing, William Schneider spoke as a spokesman for
8 the Strawberry Neighbors, asking the Planning Commission to limit or revoke Seaplane's use
9 permit.
- 10 25. The Planning Commission, however, agreed with Seaplane that the County lacked
11 jurisdiction over the airline—finding that Seaplane Adventures had not violated any
12 conditions of its use permit, and that the County's jurisdiction is limited by preemption, as
13 much of the business is regulated by the Federal Aviation Administration. The Planning
14 Commission, by resolution, eliminated at least 3 of the County's conditions of Seaplane's use
15 permit and unanimously found that no violation of said use permit had occurred.

16
17 I declare under penalty of perjury under the laws of the United States that the foregoing is true
18 and correct. Executed this 16th day of September, 2021, at San Rafael, California.

19
20 /S/ Aaron Singer

21 Saul Aaron Singer

22 **SIGNATURE ATTESTATION**

23 I hereby attest that I have on file all holographic signatures corresponding to any
24 signatures indicated by a conformed signature (/S/) within this e-filed document.

25 Dated: September 16, 2021

LAW OFFICES OF JOHN E. SHARP

26 By: /s/

27 John E. Sharp

Attorney for Plaintiff

28 SEAPLANE ADVENTURES, LLC